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2 TRANSMISSION ON DECEMBER 23, 2004 TO
3 FACSIMILE #571 273 0052, FOR BOARD
4 OF PATENT APPEALS AND
5 INTERFERENCES, APPEAL FROM FINAL
6 FROM EXAMINER BETHANY L. GRILES,
7 TELEPHONE 703 305 1839, ART UNIT 3643 fax of 2 pages.

Our Ref. No. P-1542-021

10 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BOARD OF
11 PATENT APPEALS AND INTERFERENCES

12 In Re Application of:
13 LINKLATER

Date: December 23, 2004

14 Serial No. 10/654,854

Group Art Unit: 3643

15 Filed: September 3, 2002

Examiner: Bethany L Griles

16 For: A TWO BARRELED FERRULE
17 FISHING LURE

18 FEES FOR FILING OF BRIEF ON APPEAL

19 Hon. BOARD OF PATENT APPEALS AND INTERFERENCES
20 Washington, D.C. 20231

21 Applicant Linklater has filed, on November 1, 2004, its Appeal from the
22 Examiner's Final Action dated August 6, 2004. This Appeal is timely filed. Your
23 Applicant has filed its Brief on Appeal on December 23, 2004.

24 The Board is hereby authorized to deduct fees owing, expected to be \$250.00 for
25 the filing of a Brief on Appeal, from the deposit account of Liebler, Ivey & Connor,
26 P.S./Floyd E. Ivey, 35,552, Deposit account No. 50-0607.

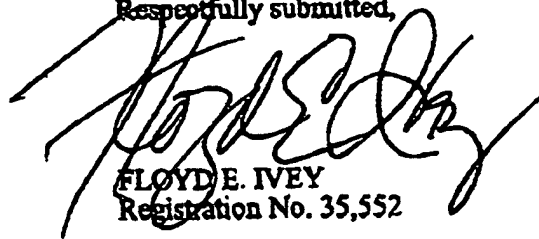
27 Certificate of facsimile filing of Brief on Appeal,
28 Application No. 10/654,854 on December 23, 2004 by Floyd E. Ivey in response to Final Office Action
of August 6, 2004.

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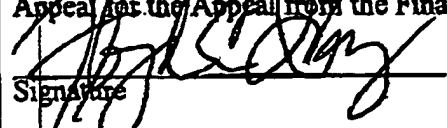


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CERTIFICATE OF TRANSMISSION:

The undersigned hereby certifies that this correspondence is being facsimile transmitted to the Board of Patent Appeals and Interferences, 571 273 0052 for the filing of Brief on Appeal for the Appeal from the Final Office Action of August 6, 2004.



Signature

Floyd E. Ivey

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6 **FROM EXAMINER BETHANY L. GRILES,**
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8 including Appendix I(2 pages), Appendix II(4 pages), Appendix III(2 pages).

9 Our Ref. No. P-1542-021

10 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BOARD OF**
11 **PATENT APPEALS AND INTERFERENCES**

12 In Re Application of:
13 LINKLATER

Date: December 23, 2004

14 Serial No. 10/1054854

Group Art Unit: 3643

15 Filed: September 3, 2002

Examiner: Bethany L Griles

16 For: A TWO BARRELED FERRULE
FISHING LURE

17 **BRIEF ON APPEAL**

18 Hon. BOARD OF PATENT APPEALS AND INTERFERENCES
19 Washington, D.C. 20231

20 Applicant Linklater has filed, on November 1, 2004, its Appeal from the
21 Examiner's Final Action dated August 6, 2004. This Appeal is timely filed. Your
22 Applicant now files its Brief on Appeal. The Brief on Appeal is filed within two months
23 of the filing of the Notice of Appeal and is timely filed.

24 In accordance with 37 CFR 1.192 and MPEP 1206, please consider the following:

25 1. **REAL PARTY IN INTEREST:** the real party in interest is the applicant, Mr. Darcy

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1 Linklater, 201 Main Street, P.O. Box 156, Starbuck, Wa. 99359..

2

3 **2. RELATED APPEALS AND INTERFERENCES:** There are no related appeals or
4 interferences.

5

6 **3. STATUS OF CLAIMS:** Claims 1 through 5 were filed with the original application.
7 Claims 1 through 4 are pending. Claim 5 was cancelled in the Paper filed June 3, 2004.
8 Claims 1 through 4 are appealed.

9

10 **4. STATUS OF AMENDMENTS SUBSEQUENT TO FINAL:** There have been no
11 amendments subsequent to the Examiner's Final Action..

12

13 **5. SUMMARY OF THE INVENTION:** Claims 1, 2, 3 and 4 are involved in this
14 appeal. Each claims appealed is set forth fully with reference to the specification by page
15 and line number, and, where there is a drawing, to the drawing by reference characters.
16 The Claims 1, 2, 3 and 4 are fully set out in APPENDIX I.

17 **THE BOARD IS ALERTED TO THE SUBMISSION OF SUBSTITUTE**
18 **DRAWINGS, FILED JUNE 4, 2004 AND EXPLAINED IN THE PAPER FILED JUNE**
19 **3, 2004, WHICH WHOLLY REPLACE THE DRAWINGS FILED WITH THE**
20 **APPLICATION. THERE WAS NO NEW MATTER SUBMITTED. A COPY OF THE**
21 **ORIGINAL DRAWINGS ARE FILED IN APPENDIX II. THE SUBSTITUTED**
22 **DRAWINGS ARE FILED HERewith IN THE APPENDIX III.**

23

CLAIM 1:

24

1. (Currently amended) A fishing lure comprising:

25

a. an elongated primary shaft (10)(Specification page 2/line 9, 11, 12, 14, 15, 19,

26

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28

21; p3/line 7, 10, 12, 17, 20, 23, 24, 31; page 4/line 3, 6, 11, 15, 22 and 23; Drawings 1, 1B and 2) having a first end (20)(Specification p3/lines 7, 13, 15, 24; page 4/lines 12, 20, 22, 25; Drawings 1 and 2); and a second end (30)(Specification p3/lines 8, 10, 12, 25; page 4/line 1; Drawings 1, 1B, 2):

b. an elongated lure shaft (40) (Specification page 2/line 10, 11, 13, 20; 23, 24; page 3/line 8, 14, 17, 19, 23, 25; page 4/line 9, 12, 14, 15, 16, 30, 31; Drawings 1, 1B, 2) having a lure shaft first end (50) (Specification page 3/line 8, 13, 25; page 4/line 13, 31; page 5/line 2,3; Drawings 1) and a lure shaft second end (60) (Specification page 3/lines 9, 26; Drawings 1, 1B, 2);

c. the lure shaft (40) (Specification see claim 1 subparagraph b; Drawings 1, 1B, 2) at the lure shaft second end (50) (See Claim 1 subparagraph b; drawings 1) fixedly interconnected by shaft interconnection means to the primary shaft (10) (See claim 1, subparagraph a; drawings 1; 1B, 2) proximal the second end (60) (See Claim 1 subparagraph b; Drawings 1, 1B, 2);

d. a fish hook means (70) (Specification page 3/line 11; Drawings 1, 1B, 2) having a hook shaft (90) (Specification page 3/line 11, 27, 30; page 4/line 1, 3, 4; Drawings 1B); the hook shaft (90) secured by hook shaft affixing means (100) (Specification page 3/line 11, 27, 29; Drawing 1, 1B, 2) to the primary shaft (10) proximal the second end (60);

e. lure shaft locking means (110) (Specification page 3/12; Drawings 1, 1A, 2) proximal the first end (20) to secure the lure shaft first end (50); means proximal the first end to receive fishing leader;

f. the lure shaft (40) sized to receive a lure or a bate; the bate secured from "throw off" by the lure shaft (40) at the lure shaft first end (50) being received by the locking means (110).

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CLAIM 2:

2. (Original) The fishing lure according to claim 1 further comprising:

a. the elongated primary shaft (10) (Specification page 2/line 9, 11, 12, 14, 15, 19, 21; p3/line 7, 10, 12, 17, 20, 23, 24, 31; page 4/line 3, 6, 11, 15, 22 and 23; Drawings 1, 1B and 2) and the lure shaft (40) (Specification page 2/line 10, 11, 13, 20; 23, 24; page 3/line 8, 14, 17, 19, 23, 25; page 4/line 9, 12, 14, 15, 16, 30, 31; Drawings 1, 1B, 2) are composed of a rigid material;

b. the shaft interconnection means (28) (Specification page 3/lines 10, 20; Drawing 1B) is by welding, wire wrap, wire twist, or ferrule;

c. hook shaft affixing means (100) (See claim 1 subparagraph d) to the primary shaft (10) is by welding, wire wrap, wire twist or ferrule;

d. lure shaft locking means (110) (See Claim 1 subpart e) is by ferrule means (110).

CLAIM 3:

3. (Original) The fishing lure according to claim 2 further comprising:

a. the rigid material composing the primary shaft (10) (Specification page 2/line 9, 11, 12, 14, 15, 19, 21; p3/line 7, 10, 12, 17, 20, 23, 24, 31; page 4/line 3, 6, 11, 15, 22 and 23; Drawings 1, 1B and 2) and the lure (40) (Specification page 2/line 10, 11, 13, 20; 23, 24; page 3/line 8, 14, 17, 19, 23, 25; page 4/line 9, 12, 14, 15, 16, 30, 31; Drawings 1, 1B, 2) shaft formed from metal wire;

b. the shaft interconnection means (28) (Specification page 3/lines 10, 20; Drawing 1B) is by wire twist of the lure shaft (40) proximal the lure shaft second end (60) (Specification page 3/lines 9, 26; Drawings 1, 1B, 2); about the primary shaft (10) proximal the second end (30) (Specification p3/lines 8, 10, 12, 25; page 4/line 1;

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1 Drawings 1, 1B, 2);

2 c. the lure shaft locking means (110) (Specification page 3/12; Drawings 1, 1A,
3 2) is by a double barrel ferrule (110) (Specification page 2/line 12, 20, 24; Drawings 1A)
4 the double barrel ferrule (110) having a first barrel (120) (Specification page 2/line 12;
5 page 4/line 11; Drawing 1A) receiving and securing the primary shaft (10) proximal the
6 first end (20) and having a second barrel (130) (Specification page 2/line 13, 24; page
7 4/line 12, 16, 17; page 5/line 1,2; drawing 1A) receiving the lure shaft (40) at the lure
8 shaft first end (50);

9 d. the hook shaft affixing means (100) (Specification page 3/line 11, 27, 29;
10 Drawing 1, 1B, 2) to the primary shaft (10) is by a ferrule (100) having a first ferrule end
11 (102) and a second ferrule end (103) (Specification page 3/line 29, 30, 31; page 4/lines 1,
12 2, 3, 7; Drawing 1, 1B, 2); the first ferrule end (102) receiving the primary shaft (10) at
13 the second end (30); the second ferrule end (103) receiving the hook shaft (90); crimping
14 means to secure the ferrule (100) to the primary shaft (10) and to the hook shaft (90).

15

16 **CLAIM 4:**

17 4. (Currently amended) The fishing lure according to claim 3, further comprising:

18 a. the metal wire is a tobacco colored wire;

19 b. the lure shaft (40) having a spring function urging the lure shaft (40) away
20 from the primary shaft (10) when the lure shaft (40) is received into the second barrel
21 (130).

22

23 **6. ISSUES:**

24 A. Whether Claims 1, 2 and 3 are unpatentable under 35 U.S.C. 102(b) as being
25 anticipated by Boullt et al (US5605004).

26

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1 B. Whether Claim 4 is unpatentable under 35 U.S.C. 103(a) over Boulit et al in
2 view of Ogle (US5253446).

3
4 **7. GROUPING OF CLAIMS:**

5 The Claims subject to this appeal, claims 1, 2, 3 and 4, do not stand or fall
6 together.

7 The Claims subject to this appeal, claims 1, 2, 3 and 4, do not form groups.

8 Your applicant states, in the ARGUMENT Section, why the claims do not stand
9 or fall together and why the claims are separately patentable. In accordance with In re
10 Young, 927 F.2d 588, 590 (C.A. Fed. 1991), arguments are set forth regarding these
11 points relative to of each of Claims 1, 2, 3 and 4.

12
13 **8. ARGUMENT:**

14 A. Regarding Rejections of Claims 1, 2 and 3 under 35 U.S.C. 102(b): Law
15 regarding 35 U.S.C. 102.

16 A rejection for anticipation under section 102 requires that each and every
17 limitation of the claimed invention be disclosed in a single prior art reference. (*Helifix*
18 *Ltd. v. Blok-Lok, Ltd.* 208 F.3d 1339, 1346, C.A.Fed. (Mass.),2000; *In Re Paulsen*, 30
19 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); For a prior art reference to
20 anticipate in terms of 35 U.S.C. S 102, every element of the claimed invention must be
21 identically shown in a single reference. The elements must be arranged as in the claim
22 under review. (*Pfund v. U.S.* 40 Fed.Cl. 313,339 (Fed.Cl.,1998); *In Re Bond*, 910 F.2d
23 831, 832, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990). Prior art anticipates an invention ... if
24 a single prior art reference contains each and every element of the patent at issue,
25 operating in the same fashion to perform the identical function as the patented product.

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1 "Thus, any degree of physical difference between the patented product and the prior art,
2 NO MATTER HOW SLIGHT, defeats the claim of anticipation." (*American*
3 *Permahedge, Inc. v. Barcana, Inc.*, 857 F. Supp. 308, 32 USPQ2d 1801, 1807-08 (S.D.
4 N.Y. 1994); It is incumbent upon the examiner to identify wherein each and every facet of
5 the claimed invention is disclosed in the applied reference. (*Ex Parte Levy*, 17 USPQ2d
6 1461, 1462 (Bd. Pat. App. & Int'f 1990)). Since the structures of Boultt differ from that
7 shown herein, the reference must be discounted as anticipating the present invention.

8
9 **SUMMARY of Law regarding 35 U.S.C. 102.**

10 Thus, in summary regarding Claims 1, 2, 3 and 4, all rejected under 35 U.S.C.
11 102(b), has the following been shown:

- 12 1. that each and every limitation of the claimed invention is disclosed in Boultt et
13 al. US Patent No. 5605004.
- 14
- 15 2. that Boultt et al anticipates, in terms of 35 U.S.C. 102, every element of the
16 claimed invention such that each element is identically shown in this single
17 reference.
- 18
- 19 3. that he elements of Boultt et al are arranged as in the claim under review.
- 20
- 21 4. that the Examiner has met the burden "...to identify wherein each and every
22 facet of the claimed invention is disclosed in the applied reference of Boultt et al.
- 23

24 The claim of anticipation is defeated if "...any degree of physical difference
25 between the patented product and the prior art, NO MATTER HOW SLIGHT..." exists.

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1 Your applicant respectfully asserts that the Examiner has not met the requirements
2 of the cases and principals above cited. Your applicant respectfully now demonstrates
3 which limitations in the invention are not found in the reference and why the Examiner
4 reading of the reference is in error. Your applicant respectfully asserts that the structures
5 of Boullet et al differ from the structures claimed in Claims 1, 2 and 3 and hence that the
6 reference of Boullet et al must be discounted as anticipating the present invention.

7
8 **CLAIM 1:** The Examiner has rejected claims 1-3 as anticipated by Boullet,
9 under 35 U.S.C. 102(b).

10 Regarding the Examiner's rejection of Claim 1, the Examiner states that Boullet et

11 al

12 "...disclose a fishing lure comprising an elongated primary shaft 20 having a first
13 and second end, an elongated lure shaft 28 having a lure shaft first end and a lure
14 shaft second end, the lure shaft at the lure shaft second end fixedly interconnected
15 by shaft interconnection means to the primary shaft proximal the second end (see
16 structure located between elements 26 and 22); a fish hook means having a hook
17 shaft 42 the hook shaft secured by hook shaft affixing means to the primary shaft
18 proximal the second end (figure 8); the lure shaft locking means proximal the first
19 end to secure the lure shaft first end; means proximal the first end to receive
20 fishing leader (col 4, lines 20-30); and the lure shaft 28 sized to receive a lure or
21 bait; the bait secured from "throw off" by the lure shaft at the lure shaft first end
22 being received by the locking means (best seen in figure 8, where elements 24 and
23 48 join in a joint covered by the body portion 46).

24 Your applicant respectfully reiterates the structure of the present invention from
25 Claim 1. The present invention comprises:

26 1. (Currently amended) A fishing lure comprising:

- 27 a. an elongated primary shaft (10) having a first end (20) and a second end (30);
28 b. an elongated lure shaft (40) having a lure shaft first end (50) and a lure shaft
29 second end (60);
30 c. the lure shaft (40) at the lure shaft second end (50) fixedly interconnected by

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33 2004 by Floyd E. Ivey in response to the Final Office Action
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shaft interconnection means to the primary shaft (10) proximal the second end (60);

d. a fish hook means (70) having a hook shaft (90); the hook shaft (90) secured by hook shaft affixing means (100) to the primary shaft (10) proximal the second end (60);

e. lure shaft locking means (110) proximal the first end (20) to secure the lure shaft first end (50); means proximal the first end to receive fishing leader;

f. the lure shaft (40) sized to receive a lure or a bate; the bate secured from "throw off" by the lure shaft (40) at the lure shaft first end (50) being received by the locking means (110).

The Examiner incorrectly analogizes a first arm 24 and a second arm 26, from Boult et al col 4/lines 20-23 and col 4/lines 33-39, with the primary shaft (10) and the lure shaft (40) of the present invention. The structure of Boult et al is distinguished from that of the present invention. In Boult et al col 4/lines 20-23 and col 4/lines 33-39, there is disclosed:

The preferred embodiment, as shown in FIGS. 1 through 8, is comprised of a wire shaft 20 angularly bent into a substantially V-shape at an apex 22 forming a first arm 24 and a second arm 26.

The prime novelty of the invention resides in the addition of a hollow tube 28 positioned over and intimately surrounding the shaft first arm 24. This tube 28 reinforces the arm 24, increasing the stiffness and changing the structural integrity entirely, thus augmenting the first arms 24 rigidity and, yet, leaving the unsheathed second arm 26 sufficiently flexible to move freely when acted upon by secondary forces.

The Board's attention is drawn first to the fact that the first arm 24 and the second arm 26 of Boult et al do not share a shaft locking means to secure the first arm 24 proximal the first end. Thus Boult et al specifically fails to demonstrate claim 1 subparagraph "e. lure shaft locking means (110) proximal the first end (20) to secure the

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1 lure shaft first end (50);...".

2 The Examiner incorrectly analogizes Boullt et al tube 28, as "an elongated lure
3 shaft 28". It rather is a "tube 28" which reinforces arm 24. The Examiner incorrectly
4 analogized tube 28 (identified by the Examiner as "the lure shaft 28") sized to receive a
5 lure or bait; *the bait secured from "throw off" by the lure shaft at the lure shaft first end*
6 *being received by the locking means* which the Examiner states is "best seen in figure 8[if
7 Boullt et al], where elements 24 and 48 join in a joint covered by the body portion 46."
8 Here the Examiner has ascribed a non-existing "locking means" attribute to tube 28 and
9 the structure of Boullt et al. Your applicants invention presents a

10 "primary shaft (10)...[and]... an elongated lure shaft (40)...[with]...lure shaft
11 locking means (110) proximal the first end (20) to secure the lure shaft first end
12 (50); means proximal the first end to receive fishing leader...the bait secured from
13 "throw off" by the lure shaft (40) at the lure shaft first end (50) being received by
14 the locking means (110)."

15 The Boullt et al elements 24 and 48 and other elements pertinent to the
16 examination of the limitations of your present invention are addressed in Boullt et al at
17 column 5/commencing at line 32 as follows:

18 A conventional fishing hook 42 is angularly crimped onto the outermost end of
19 the first arm 24 and tube 28...with its obvious purpose of retaining a fish when
20 caught. The angle of the hook 42, with respect to the arm 24, is preferably from 40
21 degrees to 50 degrees, with 45 degrees optimum....A weighted head 44 surrounds
22 the hook 42 at the crimp interface...The head 44, shown best in FIG. 8, consists of
23 a head portion 46, neck 48, collar 50, and trailer keeper 52, and is constructed...

24 The Board is respectfully urged to appreciate that Boullt et al does not present a
25 primary shaft (10) and a lure shaft (40), the two of which are secured together by locking
26 means (110) such that bait is secured from "throw off". Rather, Boullt et al
27 demonstrates a hook means is at the equivalent of the present invention's lure shaft (40)
28 first end (50). This is in opposition of the placement of the hook means (70) in the
present invention at the lure shaft second end (60) and the primary shaft second end (30)

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1 of the present invention.

2 Additionally, the Boullet et al tube (28), which is similar to the lure shaft (40) of
3 the present invention, is not received and locked at a locking means (110) as seen in your
4 applicants invention disclosure and claim.

5 The applicant has amended the Drawings and has submitted substitute Drawings.
6 However, the structural differences between your applicant's invention and that of Boullet
7 is seen in the comparison of the Figures as originally submitted with this application.
8 Both the substitute drawings and the original drawings are included in the Appendix to
9 this Brief on Appeal.

10 It is respectfully submitted that said differences distinguish your applicant's
11 invention from that of Boullet et al. Your applicant respectfully requests the Board to find
12 that Boullet et al does not anticipate the present structure and hence fails under 35 U.S.C.
13 102(b).

14
15 **CLAIM 2: Regarding the Examiner's rejection of Claim 2**, the Examiner
16 compares that portion of Boullet between "26 and 22" with the present invention "shaft
17 interconnection means ...by welding, wire wrap, wire twist, or ferrule" of the primary
18 shaft (10) at the second end (30) with the lure shaft second end (60).

19 Your applicant respectfully draws the Board's attention to the structure of Boullet
20 et al at the "26 to 22" portion where a single wire is bent at 22 of Boullet et al thereby
21 forming a first arm 24 and a second arm 26. (Boullet et al at col 4/lines 22-23). Your
22 applicant respectfully argues that this forming of a "...substantially V-shape at an apex...",
23 seen in Boullet et al at col 4/line 22, is not the structure described and claimed by your
24 applicant in joining the primary shaft and the lure shaft.

25 The Examiner, at paragraph 3, last phrase of the Examiner's Action of August 6,

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2004, refers to "lure shaft locking means is by ferrule means (40)" for Boult et al. The Board's attention is drawn to Boult et al col 5/lines 26-28 and the identification of hollow sleeve (40). The Board will see that the hollow sleeve (40) of Boult is at the structural equivalent of the first end (20) of the primary shaft (10) of your applicant's invention rather than at the lure shaft first end (50). That is, the hollow sleeve (40) of Boult et al secures the "primary shaft" or second arm (26) of Boult et al rather than the lure shaft.

It is respectfully submitted that said differences in structure both disclosed and claimed distinguish your applicant's invention from that of Boult et al. Your applicant respectfully requests the Board to find that Boult et al does not anticipate the present structure and hence fails under 35 U.S.C. 102(b).

CLAIM 3: Regarding the Examiner's rejection of Claim 3, the Examiner again observes "the shaft interconnection means is by wire twist of the lure shaft 22 proximal the lure shaft second end about the primary shaft proximal the second end" with reference to elements 20, 22 of Boult et al in Fig. 8. The Board's attention is directed to the continuous wire shaft of Boult et al extending to form the first leg 24 and the second leg 26 with a V-shape apex formed at the bend 22. There is no comparable structure in Boult et al to the present invention's primary shaft (10) and the lure shaft (40) and the interconnection of the two as is seen in your applicant's invention. Arguments set forth regarding Claims 1 and 2 are here incorporated relative to the basis for rejection of Claim 3.

The Examiner refers to a double barrel ferrule 40 in Boult et al. The Board's attention is drawn to the fact that there is no double barrel ferrule in Boult et al by reference to Boult et al at column 5/lines 26-27 where the element indicated by the

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1 Examiner as a double barrel ferrule 40 in Boullet is stated as "...a hollow cylinder 40
2 illustrated by itself in FIG. 6." However, the Board's attention is more specifically
3 directed to the disclosure in Boullet et al at col 5/lines 10-30 where both a sleeve 36 and a
4 hollow cylinder 40 is discussed and depicted in FIG 1, 3, 5, 6 and 9 where the sleeve 36
5 or hollow cylinder 40 is depicted as a closure device to form Boullet et al arm 26 into an
6 eye. This specific structure of Boullet et al, i.e., sleeve 36 as a closure device and arm 26
7 closed into any eye, to be relevant here must be identical to the structure of your
8 applicant's invention at subparagraph e. of claim 1 stating "e. lure shaft locking means
9 (110) proximal the first end (20) to secure the lure shaft first end (50); means proximal
10 the first end to receive fishing leader." The closure sleeve 36 of Boullet et al does not
11 engage the second end (30) of a primary shaft (10) and the lure shaft (40) at the lure shaft
12 second end (50). The structure of your applicant's disclosure and claim is not found in
13 Boullet et al.

14 The Examiner, at page 3, paragraph 4 in the Action of August 6, 2004, observes,
15 in Boullet et al, the use of a "ferrule" 28 having a first ferrule end and a second ferrule end
16 with the second ferrule end receiving the hook shaft. The Board is respectfully directed
17 to Boullet et al at col 4/line 21-23 where the "wire shaft 20 angularly bent into a
18 substantially V-shape at an apex 22 forming a first arm 24 and a second arm 26. And the
19 Board is directed to col 4/line 33-34 stating "The prime novelty of the invention [of
20 Boullet] resides in the addition of a hollow tube 28 positioned over and intimately
21 surrounding the shaft first arm 24. This tube 28 reinforces..." Hence, there is no ferrule
22 28 in Boullet et al. Rather, in Boullet, col 5/lines 30-33, "A conventional fishing hook 42 is
23 angularly crimped onto the outermost end of the first arm 24 and tube 28, as depicted in
24 the cross-section of FIG. 8 ..." The Examiner's reference to "ferrule" 28 is directed to
25 analogizing the tube 28 of Boullet et al with the structure of the present invention namely
26

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1 "...a ferrule (100) having a first ferrule end (102) and a second ferrule end (103; the first
2 ferrule end (102) receiving the primary shaft (10) at the second end (30); the second
3 ferrule end (103) receiving the hook shaft (90); crimping means to secure the ferrule
4 (100) to the primary shaft (10) and to the hook shaft (90)." The fact of the Boult et al
5 fishing hook 42 crimping onto the "...tube 28..." distinguishes the Boult et al structure
6 from that of the present invention.

7 Of greater pertinence is the structure disclosed in Boult et al, col 4/lines 21-23
8 "The preferred embodiment...is comprised of a wire shaft 20 angularly bent into a
9 substantially V-shape at an apex 22 forming a first arm 24 and a second arm 26..." and at
10 Col 4/lines 33- "The prime novelty of the invention resides in the addition of a hollow
11 tube 28 positioned over and intimately surrounding the shaft first arm 24. This tube 28
12 reinforces the arm 24, increasing the stiffness and changing the structural integrity
13 entirely, thus augmenting the first arms 24 rigidity and, yet, leaving the unsheathed
14 second arm 26 sufficiently flexible to move freely when acted upon by secondary
15 forces..." At col 5/lines 3-8 "Further, the shaft 20 is configured with an arched open loop
16 30 formed integrally with the hollow tube 28 at the apex of the V-shape...as the purpose
17 of the loop is to provide an attachment for the fishing line..." The open loop 30 fulfills
18 the purpose of the first end (20) of the primary shaft (10) of your applicant's invention
19 and comprises a distinctly different structure. In Boult et al, a fish hook 42 is attached to
20 first arm 24. Your applicant's disclosure and claim is for a fish hook (70) to be affixed by
21 means at the primary shaft (10) proximal the second end (60). The structures are
22 distinctly different. Your applicant respectfully requests the Board to find that
23 Boult et al does not anticipate the present structure and hence fails under 35 U.S.C.
24 102(b).

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B. Regarding Rejections of Claim 4 under 35 U.S.C. 103(a):

Law regarding 35 U.S.C. 103(a).

The absence of a feature similar to the feature or features of the present invention are respectfully argued as references which teach away from the disclosed and claimed invention and thus are not appropriately a basis of rejection under 103 *National Steel Car, Ltd. v. Canadian Pacific Ry., Ltd.* 357 F.3d 1319, 1339 (C.A.Fed. Pa. 2004); *In re Gurley* 27 F.3d 551 at 553(1994 cafc). In general a reference will teach away if the line of development flowing from the references disclosure is unlikely to be productive of the result sought by the applicant. The structural distinctions demonstrated in Argument relating to the rejection under 35 U.S.C. 102(b) demonstrate that Boullt et al does not flow toward the structures of your present applicant's invention and hence teach away from the present invention.

The Examiner has urged prior art alone and in combination as rendering obvious the present invention. However, there is not demonstrated teaching, suggestion or motivation to so combine the several components in the manner done by your present applicant. Such recitation of prior art does not form a basis for rejection as obvious. C.R. Bard, Inc. v. M3 Systems, Inc., 157 F.3d 1340, 1361, 48 USPQ2d 1225, 1240 (Fed. Cir. 1998), rehearing denied & suggestion for rehearing in banc declined, 161 F.3d 1380 (Fed. Cir. 1998) ("The ultimate question is whether, from the evidence of the prior art and the knowledge generally available to one of ordinary skill in the relevant art, there was in the prior art an appropriate teaching, suggestion, or motivation to combine components in the way that was done by the inventor."); Chiuminatta Concrete Concepts, Inc. v. Cardinal Industries, Inc., 145 F.3d 1303, 1312, 46 USPQ2d 1752, 1759 (Fed. Cir. 1998) ("for a claim to be invalid for obviousness over a combination of references, there must have been a motivation to combine the prior art references to produce the claimed invention.");

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1 Kahn v. General Motors Corp., 135 F.3d 1472, 45 USPQ2d 1608 (Fed. Cir. 1998), cert.
2 denied, 119 S. Ct. 177 (1998); Fromson v. Anitec Printing Plates, Inc., 132 F.3d 1437,
3 1447, 45 USPQ2d 1269, 1276 (Fed. Cir. 1997), cert. denied, 119 S. Ct. 56 (1998) ("there
4 is no suggestion or teaching in the prior art to select from the various known procedures
5 and combine specific steps, along with a new electrical structure, in the way that is
6 described and claimed by [the patentee]."); Gambro Lundia AB v. Baxter Healthcare
7 Corp., 110 F.3d 1573, 1578-79, 42 USPQ2d 1378, 1383, 1384 (Fed. Cir. 1997) ("the
8 record must provide a teaching, suggestion, or reason to substitute computer-controlled
9 valves for the system of hoses in the prior art. The absence of such a suggestion to
10 combine is dispositive in an obviousness determination."; "Without a suggestion or
11 teaching to combine, [the accused infringer's] case of obviousness suffers a significant
12 deficiency."); Kolmes v. World Fibers Corp., 107 F.3d 1534, 1541, 41 USPQ2d 1829,
13 1833 (Fed. Cir. 1997) (the district court did not err in holding the patent in suit not invalid
14 for obviousness; the patent concerned a cut-resistant yarn for use in making products such
15 as gloves, which, unlike prior art yarns, did not use metallic components such as wire; the
16 yarn includes two core strands wrapped in opposite directions around two covering
17 strands; one core strand is fiberglass; the other core strand and the covering strands are
18 nylon or other material; the patent's claim required, inter alia, that there be a two strand
19 core and that the covering strands be "wrapped about said core at the rate of 8-12 turns
20 per inch."; a prior art reference showed a yarn with a wrapping rate of 2-24 turns per inch,
21 but the reference disclosed the use of wire, and the accused infringer "has shown no
22 suggestion or motivation to modify the teaching of the [reference] with regard to
23 non-metallic fibers."); Litton Systems, Inc. v. Honeywell, Inc., 87 F.3d 1559, 1568, 39
24 USPQ2d 1321, 1327 (Fed. Cir. 1996) ("[N]one of the prior art references, alone or in
25 combination, teach or suggest a method [specified in the patent's claims]. The prior art
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1 simply does not contain many limitations in the claimed method. Furthermore, the record
2 discloses no teaching or suggestion to combine any of these references. The absence of a
3 suggestion to combine is telling in an obviousness determination."); B.F. Goodrich Co. v.
4 Aircraft Braking Systems Corp., 72 F.3d 1577, 37 USPQ2d 1314 (Fed. Cir. 1996),
5 discussed at N. 12.10(1) infra; Pro-Mold and Tool Co., Inc. v. Great Lakes Plastics, Inc.,
6 75 F.3d 1568, 37 USPQ2d 1626 (Fed. Cir. 1996); Beachcombers, International, Inc. v.
7 WildeWood Creative Products, Inc., 31 F.3d 1154, 1161, 31 USPQ2d 1653, 1659 (Fed.
8 Cir. 1994) (the patent claims in suit were not obvious in view of the prior art because the
9 art did "not remotely suggest configuring" the device as required by the claim);
10 Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc., 21 F.3d 1068,
11 1072, 30 USPQ2d 1377, 1379 (Fed. Cir. 1993) ("When the patented invention is made
12 by combining known components to achieve a new system, the prior art must provide a
13 suggestion or motivation to make such a combination."). Texas Instruments Inc. V. U.S.
14 Int'l Trade Comm'n, 988 F.2d 1165, 26 USPQ2d 1018 (Fed. Cir. 1993) for the
15 proposition that obviousness is not supported where the references do not demonstrate to
16 combine to produce the invention as presently disclosed.

17 The issue of viewing the present invention as a template is an inappropriate basis
18 for rejection on the basis of obviousness. The prior art "references in combination do not
19 suggest the invention as a whole claimed in the ... patent. Absent such a suggestion to
20 combine the references, respondents can do no more than piece the invention together
21 using the patented invention as a template." Heidelberger Druckmaschinen AG v.
22 Hantscho Commercial Products, Inc., 21 F.3d 1068, 30 USPQ2d 1377 (Fed. Cir. 1993
23 where the court held that "The motivation to combine references can not come from the
24 invention itself."

25 The applicant respectfully submits that the references, alone and in combination,
26

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1 otherwise must constitute improper use of hindsight reconstruction. *In Re Pleuddeman*,
2 910 F.2d 823, 828, 15 US PQ2d 1738, 1742 (Fed. Cir. 1990); *In Re Mahurkar Patent*
3 *Litigation*, 831 F.Supp. 1354, 28 US PQ2d 1801 (N.D. Ill. 1993). The cases cited stand
4 for the rule that decomposing an invention into its constituent elements, finding each
5 element in the prior art, and then claiming that it is easy to reassemble these elements into
6 the invention, is a forbidden ex post analysis. The applicant submits that it is
7 impermissible to use the claimed invention as an instruction manual or template to piece
8 together the teachings of the prior art so that the claimed invention is rendered obvious.
9 The references simply do not teach to combine the requisite features of your applicant's
10 invention. "Before the PTO may combine the disclosures of two or more prior art
11 references in order to establish Prima Facie obviousness, there must be some suggestion
12 for doing so, found either in the references themselves or in the knowledge generally
13 available to one of ordinary skill in the art.(IN RE Jones, 958 F.2d 347, 351, 21 USPQ2d
14 1941, 1943-44 (Fed. Cir. 1992)). "Evidence of a suggestion, teaching, or motivation to
15 combine prior art references may flow, inter alia, from the references themselves, the
16 knowledge of one of ordinary skill in the art, or from the nature of the problem to be
17 solved. See Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617. Although a reference need
18 not expressly teach that the disclosure contained therein should be combined with
19 another, see Motorola, Inc. v. Interdigital Tech. Corp., 121 F.3d 1461, 1472, 43 USPQ2d
20 1481, 1489 (Fed. Cir. 1997), the showing of combinability, in whatever form, must
21 nevertheless be "clear and particular." Dembiczak, 175 F.3d at 999, 50 USPQ2d at
22 1617." *Winner International Royalty Corporation v. Ching-Rong Wang*, 202 F.3d
23 1340(CAFC 2000).

24 **UNEXPECTED IMPROVED QUALITIES.** Your applicant respectfully
25 comments on the unexpected improved qualities inherent in this disclosure and
26

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1 particularly in contrast to the disclosures of cited in the Examiner's Action. The
2 recognition that the spring function between the primary shaft and the lure shaft when the
3 lure shaft is received into the second barrel as a means of lessening the "throw off" of bait
4 is seen as an unexpected improvement over the cited art.

5 These stated features solves a concern of fisherman in lessening the likelihood
6 of loss of bate. "Factors including unexpected results, new features, solution of a
7 different problem, novel properties, are all considerations in the determination of
8 obviousness in terms of 35 U.S.C. S 103. When such factors are described in the
9 specification they are weighed in determining, in the first instance, whether the prior art
10 presents a prima facie case of obviousness ... When such factors are brought out in
11 prosecution before the PTO, they are considered in determining whether a prima facie
12 case, if made based on the prior art, has been rebutted." *IN RE Wright*, 848 F.2d 1216,
13 1219, 6 USPQ2d 1959, 1962 (Fed. Cir. 1988), DISAPPROVED IN PART, *IN RE Dillon*,
14 919 F.2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990), CERT. DENIED, *Dillon v. Manbeck*,
15 111 S. Ct. 1682 (1991), discussed in CHISUMS at S 5.04[6][d]; *Reading & Bates*
16 *Construction Co. v. Baker Energy Resources Corp.*, 748 F.2d 645, 223 USPQ 1168 (Fed.
17 Cir. 1984); *IN RE Merchant*, 575 F.2d 865, 869, 197 USPQ 785, 788 (CCPA 1978)
18 (stressing that there is no requirement that the "unexpected results relied upon for
19 patentability be recited in the CLAIMS". "It is entirely proper, nevertheless, in evaluating
20 nonobviousness, for a court to take to account advantages directly flowing from the
21 invention patented. After all, those advantages are the foundation of that 'commercial
22 success' which may be evidence of nonobviousness." *Preemption Devices, Inc. v.*
23 *Minnesota Mining & Mfg. Co.*, 732 F.2d 903, 907, 221 USPQ 841, 844 (Fed. Cir. 1984).

24 The applicant has set forth arguments and law for the basis upon which prior art
25 cited under 35 U.S.C. 103 should not result in a conclusion of obviousness for the present
26

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28 Application No. 10/654,854 on December 13,
2004 by Floyd E. Ivey in response to the Final Office Action
of August 6, 2004.

1 invention as specified and claimed. The applicant has presented features of the present
2 invention which are not found within the claims of either reference patent.

3
4 **SUMMARY of Law regarding 35 U.S.C. 103(a):**

5 Thus, in summary regarding Claim 4, rejected under 35 U.S.C. 103(a), has the
6 following been shown:

7 1. That there is present, in the prior art, a feature similar to the feature or
8 features of the present invention and that hence the cited prior art reference(s) do not
9 teach away from the disclosed and claimed invention.

10 2. That there is motivation to combine the prior art references.

11 3. From the evidence of the prior art and the knowledge generally available to
12 one of ordinary skill in the relevant art, there was in the prior art an appropriate teaching,
13 suggestion, or motivation to combine components in the way that was done by the
14 inventor.

15
16 The assertion of obviousness is defeated if there is no suggestion or teaching in
17 the prior art to select from the various known procedures and combine specific steps...in
18 the way that is described and claimed by the applicant.

19 The record must provide a teaching, suggestion, or reason to substitute for the
20 elements of the structure in the prior art. The absence of such a suggestion to combine is
21 dispositive in an obviousness determination.

22 Without a suggestion or teaching to combine, the urging of obviousness suffers
23 a significant deficiency.

24 Your applicant respectfully asserts that the references taken as a whole do not
25 suggest the claimed subject matter of the present invention and that the combination

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1 indicated is improper. Examiner has not met the requirements of the cases and principals
2 above cited. Your applicant respectfully asserts that the structures of Boulit et al differ
3 from the structure claimed in Claim 4 and hence that the reference of Boulit et al and of
4 Boulit et al in light of Ogle do not teach, direct or suggest the structure of Claim 4.

5 **CLAIM 4:**

6 Regarding the Examiner's rejection of Claim 4: The Examiner, at paragraph 6
7 rejected Claim 4, under 35 U.S.C. 103(a), as being unpatentable over Boulit et al in view
8 of Ogle. The Examiner notes that Boulit et al discloses a metal wire with a spring
9 function at col 4/lines 22-25. The Board is referred to Boulit et al claim 5 regarding a
10 "spring" function in Boulit et al. The reference at col 4/lines 22-25 to "spring" is to the
11 preferred material for the forming of the continuous wire comprising the first arm and
12 second arm, 24 and 26, but does not then describe a spring function between the first arm
13 and the second arm, 24 and 26.

14 This is a distinctly different structure from that described by your applicant at
15 the patent application page 4 commencing at line 14 and claimed at claim 4 where the
16 lure shaft (40) is urged away from the primary shaft (10) by a spring function when the
17 lure shaft (40) is received into the second barrel (130).

18 Your applicant respectfully requests the Board to find that Boulit et al does not
19 teach a spring function to urge separation of a lure shaft (40) from a primary shaft (10),
20 does not render obvious the present structure and hence fails under 35 U.S.C. 103(a).

21 The Examiner has cited Ogle for the use of copper wire in fishing lures and
22 concludes that the color "tobacco" is completely equivalent to the color "copper" based
23 on the Examiner's personal experience in being raised on a tobacco farm. The
24 Examiner's comment is a belief or conclusion without cited authority and is thus without
25 basis for use in rejection of a patent claim. An applicant has a duty to resist an
26

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1 Examiner's assertions of unsupported beliefs. *Omark Industries, Inc. v. Carlton Co.* 458
2 F.Supp. 449, 453 (D.C.Or.1978)

3 Your applicant respectfully requests the Board to find that Boullet et al in view
4 of Ogle does not render claim 4 obvious and hence fails under 35 U.S.C. 103(a).

5 **UNEXPECTED RESULT:** An unexpected improved quality is found in the
6 spring function between the primary shaft (10) and the lure shaft (40) when the lure shaft
7 is received into the second barrel as a means of lessening the "throw off" of bait which is
8 seen as an unexpected improvement over the cited art.

9
10 **SUMMARY OF AMENDMENTS AND REMARKS**

11 The applicant has Appealed the Examiner's Final Office Action of August 6,
12 2004 with the Appeal filed November 1, 2004. This Brief on Appeal is filed less than 60
13 days from the filing of the Appeal in accordance with 37 CFR 1.192(a) which requires
14 filing of the Appellant's Brief within two months from the date of the notice of appeal.
15 Your applicant has tendered with this Brief on Appeal the fees required in 37 CFR 1.17
16 (c) in the amount of \$250.00. Your applicant respectfully requests the Board to allow the
17 claims as presented.

18 Respectfully submitted,

19
20
21 FLOYD E. IVEY

22 Registration No. 35,552

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24 Telephone No. (509) 735-3581

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CERTIFICATE OF TRANSMISSION:

The undersigned hereby certifies that this correspondence is being facsimile transmitted to the BOARD OF PATENT APPEALS AND INTERFERENCES, APPEAL from the FINAL OFFICE ACTION OF AUGUST 6, 2004 BY EXAMINER BETHANY L. GRILES, 703-305 1839, Art Unit 3643, of the Patent and Trademark Office Fax No. (703) 872 9306 on December 23, 2004.

Signature

Floyd E. Ivey

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APPENDIX I

THE CLAIMS PRESENTED IN THIS APPEAL.

Claims 1, 2, 3 and 4 are presented in this appeal. The claims in this Appendix I are in the form submitted in the most recent paper preceding the Examiner's Final Action.

1. (Currently amended) A fishing lure comprising:

- a. an elongated primary shaft having a first end and a second end;
- b. an elongated lure shaft having a lure shaft first end and a lure shaft second end;
- c. the lure shaft at the lure shaft second end fixedly interconnected by shaft interconnection means to the primary shaft proximal the second end;
- d. a fish hook means having a hook shaft; the hook shaft secured by hook shaft affixing means to the primary shaft proximal the second end;
- e. lure shaft locking means proximal the first end to secure the lure shaft first end; means proximal the first end to receive fishing leader;
- f. the lure shaft sized to receive a lure or a bate; the bate secured from "throw off" by the lure shaft at the lure shaft first end being received by the locking means.

2. (Original) The fishing lure according to claim 1 further comprising:

- a. the elongated primary shaft and the lure shaft are composed of a rigid material;
- b. the shaft interconnection means is by welding, wire wrap, wire twist, or ferrule;
- c. hook shaft affixing means to the primary shaft is by welding, wire wrap,

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of August 6, 2004

1 wire twist or ferrule;

2 d. lure shaft locking means is by ferrule means.

3
4 3. (Original) The fishing lure according to claim 2 further comprising:

5 a. the rigid material composing the primary shaft and the lure shaft formed
6 from metal wire;

7 b. the shaft interconnection means is by wire twist of the lure shaft proximal
8 the lure shaft second end about the primary shaft proximal the second end;

9 c. the lure shaft locking means is by a double barrel ferrule; the double barrel
10 ferrule having a first barrel receiving and securing the primary shaft proximal the first end
11 and having a second barrel receiving the lure shaft at the lure shaft first end;

12 d. the hook shaft affixing means to the primary shaft is by a ferrule having a
13 first ferrule end and a second ferrule end; the first ferrule end receiving the primary shaft
14 at the second end; the second ferrule end receiving the hook shaft; crimping means to
15 secure the ferrule to the primary shaft and to the hook shaft.

16
17 4. (Currently amended) The fishing lure according to claim 3, further comprising:

18 a. the metal wire is a copper or tobacco colored wire;

19 b. the lure shaft having a spring function urging the lure shaft away from the
20 primary shaft when the lure shaft (40) is received into the second barrel (130).

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28 Application No. 10/654,854 on December 23,
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of August 11, 2004.

APPENDIX II.
ORIGINAL DRAWINGS

Four sheets of drawings were submitted with the application as filed including Figures 1, 2, 3, 4, 5 and 6. Substitute drawings, as seen in Appendix III, were submitted on June 4, 2004. The Original Drawings are marked 26-1, 26-2, 26-3 and 26-4.

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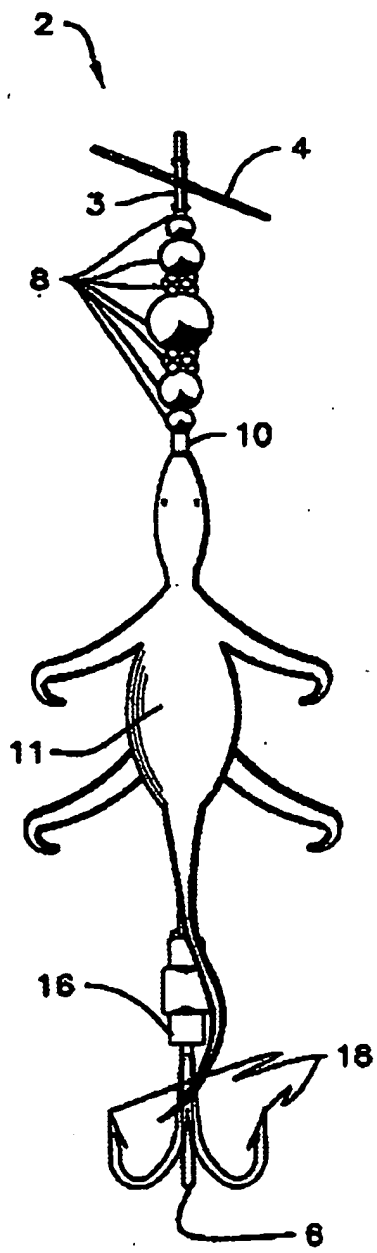


Fig. 1

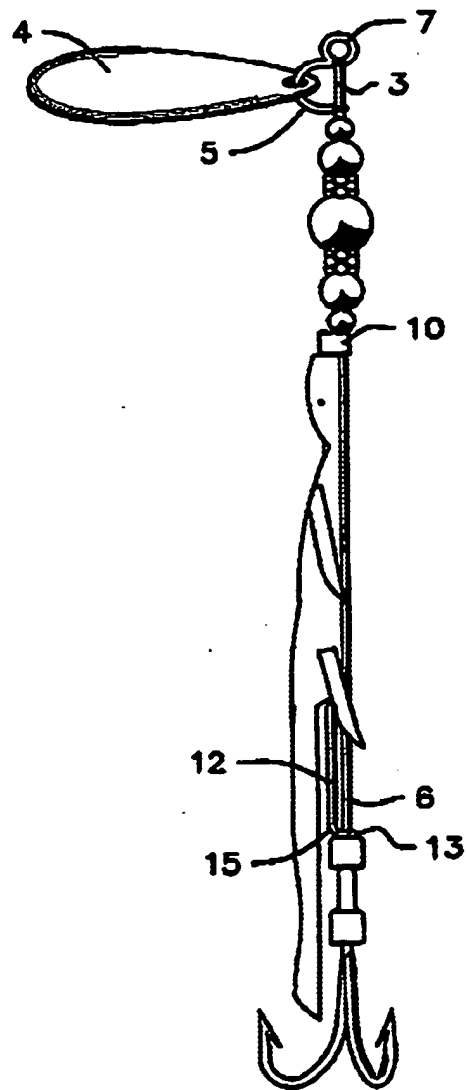


Fig. 2

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26-1

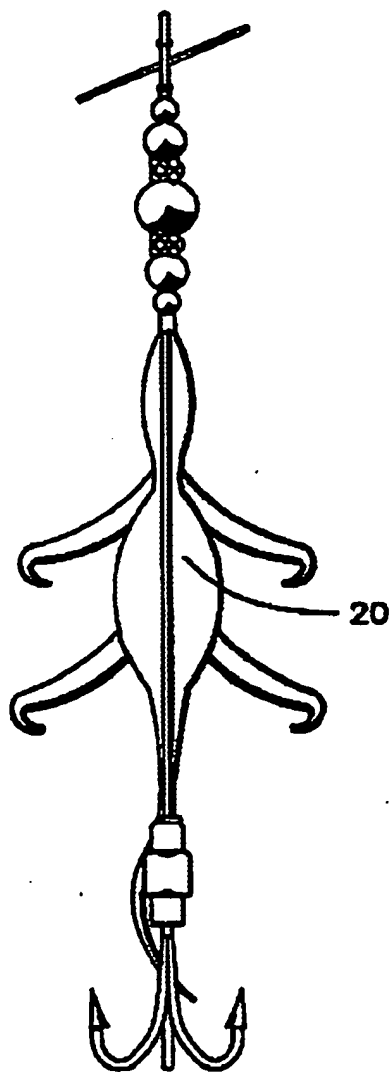


Fig. 3

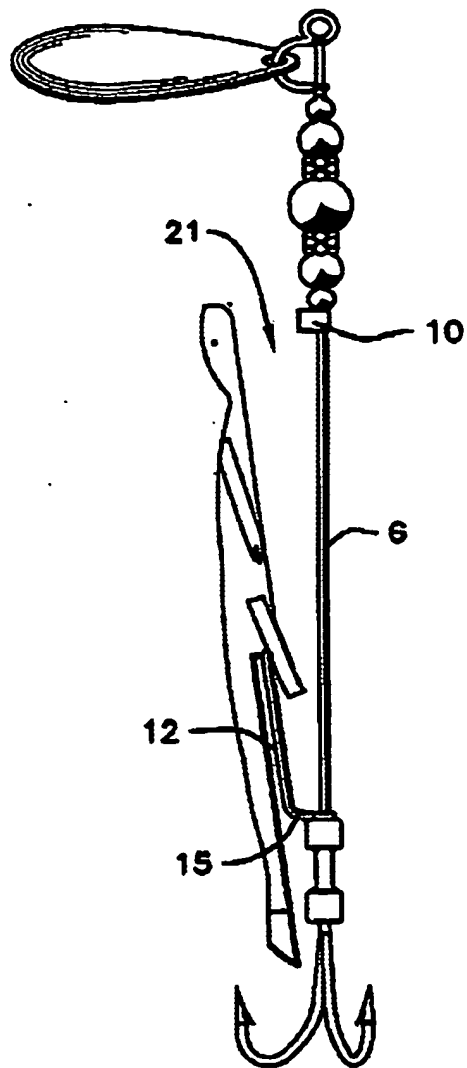


Fig. 4

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26-2

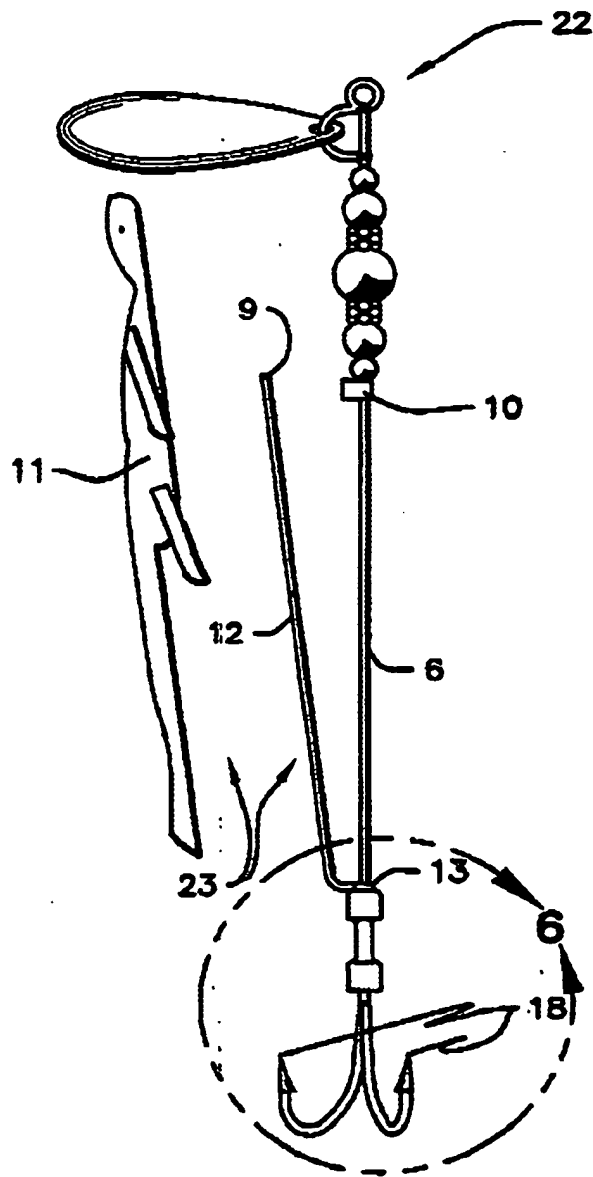


Fig. 5

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26-3

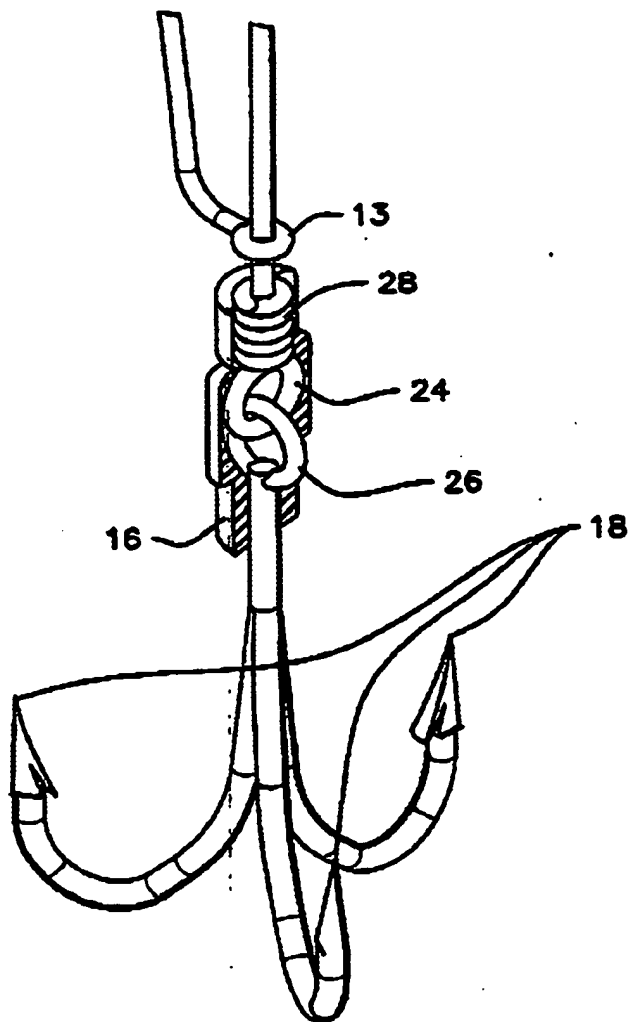


Fig. 6

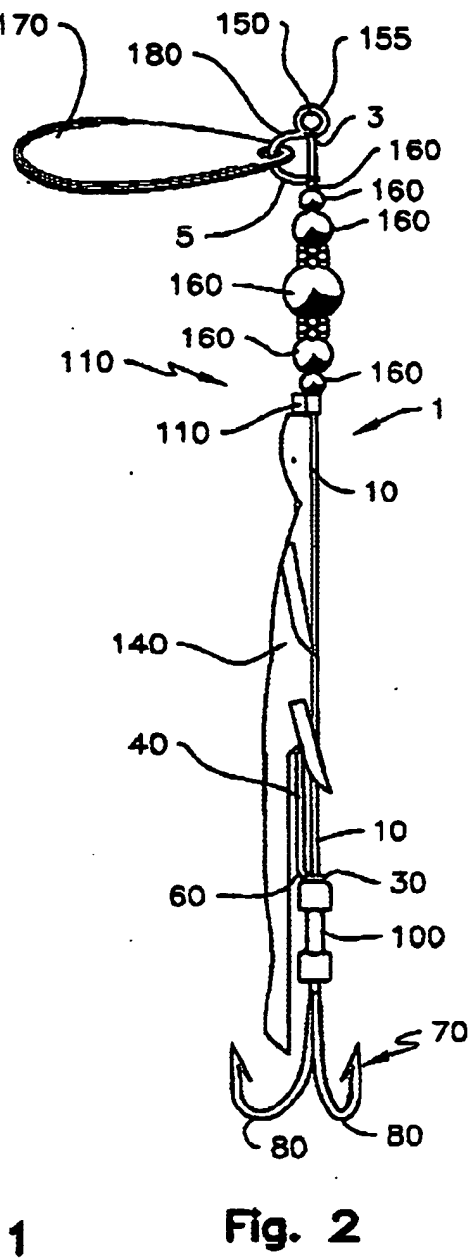
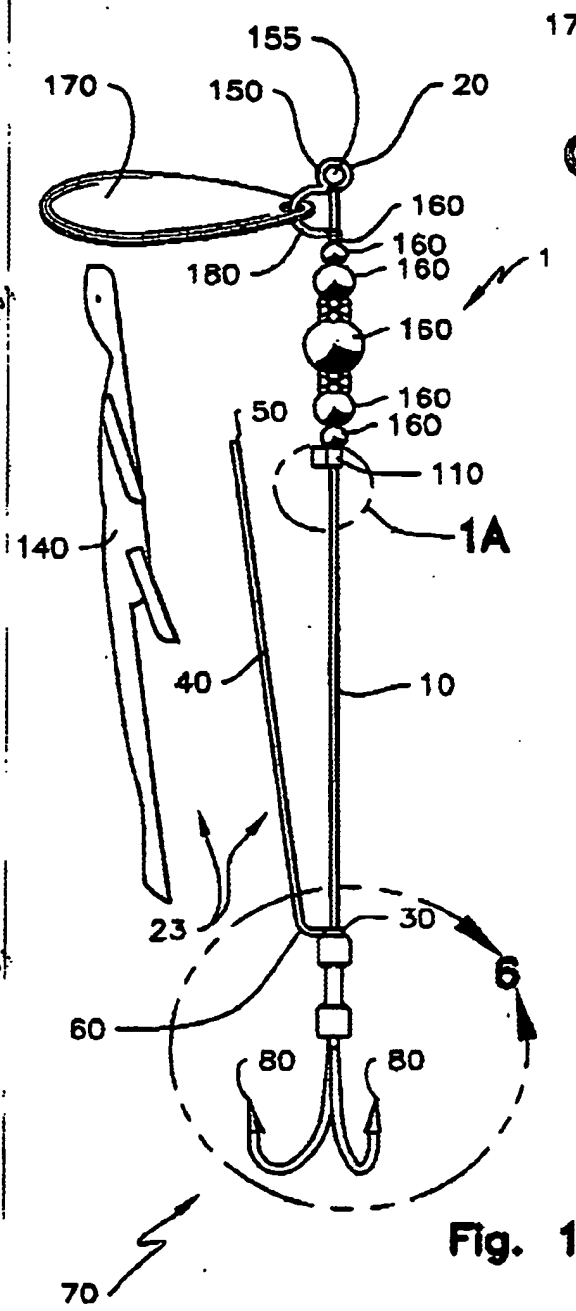
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26-4

APPENDIX III**SUBSTITUTED DRAWINGS OF JUNE 4, 2004**

Two sheets of drawings were substituted on June 4, 2004 comprising Figures 1, 1A, 1B, and 2. No new matter has been added. The two sheets are appended hereto as 27-1 and 27-2.

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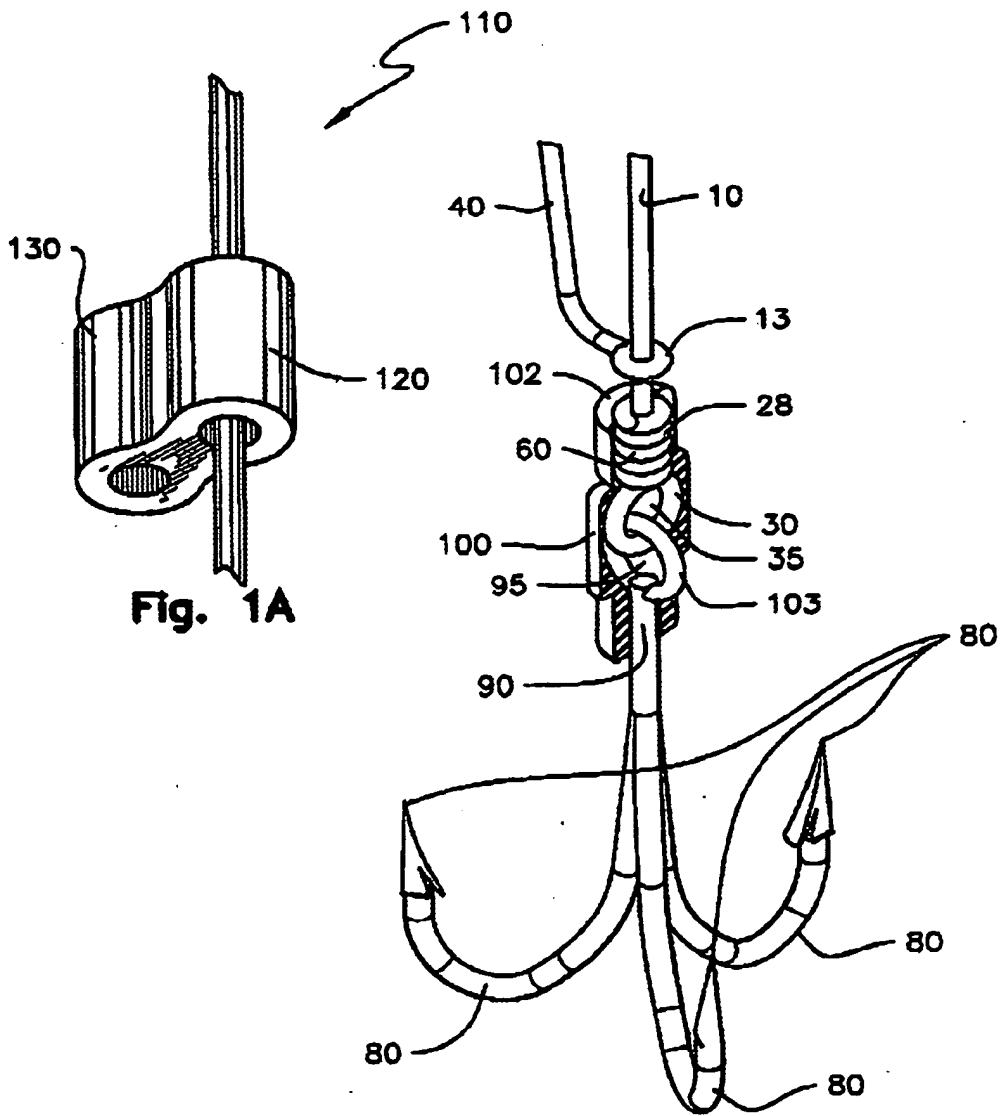


Fig. 1A

Fig. 1B

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27-1

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